



STATE OF CALIFORNIA

GAVIN NEWSOM, Governor

PUBLIC UTILITIES COMMISSION

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TO PARTIES OF RECORD IN APPLICATION 16-08-006:

This is the proposed decision of Administrative Law Judge Ehren D. Seybert. Until and unless the Commission hears the item and votes to approve it, the proposed decision has no legal effect. This item may be heard, at the earliest, at the Commission's December 1, 2022 Business Meeting. To confirm when the item will be heard, please see the Business Meeting agenda, which is posted on the Commission's website 10 days before each Business Meeting.

Parties of record may file comments on the proposed decision as provided in Rule 14.3 of the Commission's Rules of Practice and Procedure.

The Commission may hold a Ratesetting Deliberative Meeting to consider this item in closed session in advance of the Business Meeting at which the item will be heard. In such event, notice of the Ratesetting Deliberative Meeting will appear in the Daily Calendar, which is posted on the Commission's website. If a Ratesetting Deliberative Meeting is scheduled, *ex parte* communications are prohibited pursuant to Rule 8.2(c)(4).

/s/ MICHELLE COOKE

Michelle Cooke

Acting Chief Administrative Law Judge

MLC:sgu

Decision **PROPOSED DECISION OF ALJ SEYBERT** (Mailed 10/28/2022)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company for Approval of the Retirement of Diablo Canyon Power Plant, Implementation of the Joint Proposal, And Recovery of Associated Costs Through Proposed Ratemaking Mechanisms (U39E).

Application 16-08-006

DECISION IMPLEMENTING SENATE BILL 846

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DECISION IMPLEMENTING SENATE BILL 846**Summary**

In compliance with Senate Bill 846, this decision implements Sections 712.8(c)(1)(A) and 712.8(e) of the Public Utilities Code requiring the Commission to direct and authorize Pacific Gas and Electric Company to take “all actions that would be necessary” so as to preserve the option of extended operations at Diablo Canyon nuclear power plant beyond the current expiration dates, and to track all costs associated with continued and extended operations.

Application 16-08-006 is closed.

1. Background

Pacific Gas and Electric Company’s (PG&E’s) Diablo Canyon nuclear power plant (Diablo Canyon or DCP) is located in coastal San Luis Obispo County, and consists of two units that have been operating since 1985 (Unit 1) and 1986 (Unit 2), with a combined generation capacity of 2,240 megawatts (MW). The units are currently licensed by the United States Nuclear Regulatory Commission (NRC) to operate until November 2, 2024 (Unit 1) and August 26, 2025 (Unit 2).

On August 11, 2016, PG&E filed its application proposing to retire Diablo Canyon upon the expiration of its NRC licenses, as well as several other related requests for relief. Protests and responses to PG&E’s application were filed on September 15 and October 6, 2016. PG&E filed a reply to the responses and protests on September 26, 2016.

A prehearing conference (PHC) was held on October 6, 2016, to determine the parties and discuss other procedural matters.

On November 18, 2016, a *Scoping Memo and Ruling of the Assigned Commissioner and Administrative Law Judge* (Scoping Memo) was issued setting

forth the scope of issues, need for hearing, schedule, and category of the proceeding.

Over the course of the following year, direct and rebuttal testimony were served; seven days of evidentiary hearings were held; opening and reply briefs were filed; public participation hearings were held (both before and after the issuance of the Scoping Memo); two separate joint motions requesting approval of partial settlements were filed; and a final oral argument was held.

On January 16, 2018, the Commission issued Decision (D.) 18-01-022 addressing PG&E's application and the joint motions for approval of partial settlements, and authorizing the retirement of Diablo Canyon in 2024 (Unit 1) and 2025 (Unit 2).

On December 7, 2018, the Commission issued D.18-11-024, modifying in part the outcome of D.18-01-022 pursuant to Senate Bill (SB) 1090 (Stats. 2018, Ch. 561), but leaving in place the authorized retirement dates of Diablo Canyon.

On September 2, 2022, Governor Newsom signed SB 846 (Stats. 2022, Ch. 239) which allows for the extension of the operation of Diablo Canyon beyond the current retirement dates, up to five additional years (no later than October 31, 2029 and October 31, 2030 for Units 1 and 2, respectively), under specific conditions as provided.

Among the many new sections added to the Public Utilities (Pub. Util.) Code¹ as a result of SB 846, Section 712.8(c)(1)(A) requires the Commission, within 120 days of the effective date of SB 846, to:

[D]irect and authorize the operator of the Diablo Canyon Units 1 and 2 to take all actions that would be necessary to operate the powerplant beyond the current expiration dates, so as to preserve the option of extended operations, until the

¹ All subsequent section references are to the Pub. Util. Code, unless otherwise specified.

following retirement dates, conditional upon continued authorization to operate by the United States Nuclear Regulatory Commission: (i) For Unit 1, October 31, 2029. (ii) For Unit 2, October 31, 2030.

Related to Section 712.8(c)(1)(A) above, newly-added Section 712.8(e) requires the Commission to:

[O]rder the operator to track all costs associated with continued and extended operations of Diablo Canyon Units 1 and 2. The commission shall authorize the operator to establish accounts as necessary to track all costs incurred under paragraph (1) of subdivision (c), all costs incurred under the loan provided for by Chapter 6.3 (commencing with Section 25548) of Division 15 of the Public Resources Code, all costs to be borne only by the operator's ratepayers, all costs to be borne by ratepayers of all load-serving entities, consistent with this section, and any other costs as determined by the commission.

On September 9, 2022, and pursuant to Section 712.8(b)(2), a Chief Administrative Law Judge's Ruling was issued reopening Application (A.) 16-08-006. On the same day notice was provided that the proceeding was being reassigned from President Marybel Batjer to President Alice Reynolds, and from Administrative Law Judge (ALJ) Carolyn Sisto to ALJ Ehren D. Seybert.

On September 23, 2022, an *Amended Scoping Memo and Ruling of assigned Commissioner and assigned ALJ* (Amended Scoping Memo) was issued modifying the proceeding schedule and adding one limited issue to the scope of the proceeding corresponding with Sections 712.8(c)(1)(A) and 712.8(e), above.

On October 7, 2022, PG&E filed comments in response to the Amended Scoping Memo. On October 13 and 14, 2022, reply comments were filed by the Alliance for Nuclear Responsibility (A4NR); California Farm Bureau Federation

(Farm Bureau); the Public Advocates Office at the California Public Utilities Commission (Cal Advocates); Green Power Institute (GPI); Friends of the Earth (FOE) and San Luis Obispo Mothers for Peace (SLOMFP), filing jointly; Women's Energy Matters (WEM); the County of San Luis Obispo (County); and Californians for Green Nuclear Power (CGNP). PG&E filed supplemental comments on October 20, 2022, following authorization from the assigned ALJ.

2. Preserving the Option of Extended Operations at Diablo Canyon

Generally speaking, there are three sections of statute established by SB 846 that allow for, and that guide the process for the Commission's consideration of, the extension of operations at Diablo Canyon. First, Section 712.8(b)(1) invalidates Ordering Paragraphs 1 and 14 of D.18-01-022, concerning approval of PG&E's initial proposal in this proceeding to retire Diablo Canyon Unit 1 by 2024 and Unit 2 by 2025, and closing the proceeding, respectively. Second, Section 712.8(c)(1)(A) requires the Commission to direct and authorize PG&E to take "all actions that would be necessary" so as to "preserve the option" of extended operations at Diablo Canyon until October 2029 (Unit 1) and October 2030 (Unit 2). Lastly, Section 712.8(c)(2)(A) requires the Commission, by no later than December 31, 2023, and notwithstanding the separate 180-day requirement in Public Resources (Pub. Res.) Code Section 25548.2(b),² to direct and authorize PG&E to extend operations at Diablo Canyon until the new retirement dates specified above, under specific conditions as provided.

In view of the legislative invalidation of Ordering Paragraphs 1 and 14 of D.18-01-022, and this decision's formal invalidation of Ordering Paragraphs 1

² Pub. Res. Code Section 25548.2(b) requires a state agency, as defined, to "take final action on the application or request to extend the operations of the Diablo Canyon powerplant within 180 days of submission of a complete application or request."

and 14 of D.18-01-022 to ensure consistency with statute, those Ordering Paragraphs have no force or effect. Furthermore, since there are no other Commission orders that address PG&E's proposed retirement dates for Diablo Canyon in this proceeding, either in D.18-01-022 or in subsequent Commission decisions, there are no Commission-approved retirement dates for Diablo Canyon Units 1 and 2 at this time. However, because the federal licenses for Diablo Canyon are, at the time of this decision, set to expire on November 2, 2024 (Unit 1) and August 26, 2025 (Unit 2),³ for the purposes of this decision any reference to extended operations at Diablo Canyon means operations beyond the current federal license periods.

Except as provided in statute, this decision does not address, nor is the proceeding currently scoped to consider, the establishment of new retirement dates for Diablo Canyon Units 1 and 2. SB 846 provides several conditions and requirements the Commission must consider before authorizing extended operations at Diablo Canyon, including license renewal and other ongoing state processes.⁴ Therefore, consideration of the retirement dates for Diablo Canyon within the existing statutory limitations will occur through a separate Commission decision that will be effective no later than December 31, 2023.

With this context in mind, we turn to the current task in Section 712.8(c)(1)(A) of directing and authorizing PG&E to take "all actions that would be necessary" so as to "preserve the option" of extended operations at Diablo Canyon until October 2029 (Unit 1) and October 2030 (Unit 2). In comments, PG&E broadly defines the anticipated costs, and by extension the

³ See PG&E Comments, footnote 2 at 3.

⁴ See Section 712.8(c)(2).

associated actions, to preserve the option of extended operations at Diablo Canyon, as follows: (1) activities associated with obtaining a new operating license from the NRC; (2) activities associated with obtaining the applicable approvals and operating permits from the state of California; and (3) activities in connection with transitioning Diablo Canyon from existing operations into extended operations (*i.e.*, the period of time beyond the current federal license periods for Unit 1 and Unit 2).⁵

In addition to the activities above, PG&E is also expected to undertake activities associated with one or more applications under the United States Department of Energy (DOE) Civil Nuclear Credit program.⁶ With this addition, we find the above list of activities to be consistent with the statutory requirements set forth in Section 712.8(c)(1)(A), and direct and authorize PG&E to take all of the above actions, and any other actions that would be necessary, so as to preserve the option of extended operations at Diablo Canyon until October 2029 (Unit 1) and October 2030 (Unit 2).

For the sake of clarity, we do not interpret Section 712.8(c)(1)(A) as requiring the Commission to define and adopt, with specificity, each and every action PG&E must take to preserve the option of extended operations at Diablo Canyon. We reach this conclusion for the following reasons. First, the use of “all actions that *would be* necessary” is a conditional future statement (would be), rather than a factual statement (are), and is subject to further development. For example, while it is clear that federal law requires PG&E to obtain new operating licenses from the NRC prior to any extension of operations

⁵ PG&E Comments at 3-4.

⁶ *Ibid*; also, A4NR Reply Comments at 7-8; 42 U.S. Code Section 18753.

at Diablo Canyon Units 1 and 2, at the time of this decision it is not known whether and to what extent PG&E may be required to take additional actions as a condition of NRC's authorization to operate, if such authorization is granted.

Second, Section 712.8(c)(1)(A) requires the Commission to issue this decision authorizing all actions that would be necessary to preserve the option of extended operations at Diablo Canyon within 120 days of the effective date of SB 846. There is no language in this section of statute, or in other parts of SB 846, that speaks to the potential to approve additional actions that may arise after the initial 120-day period. In the absence of such language, and considering both the requirement in Section 712.8(c)(1)(A) to "preserve the option of extended operations" at Diablo Canyon, as well as the fact that various federal and state processes associated with the extension of operations at Diablo Canyon are ongoing, we interpret Section 712.8(c)(1)(A) to mean that PG&E should take all actions both known and unknown at this time to preserve the option of extended operations at Diablo Canyon, subject to the terms and conditions provided in statute.

Finally, while Section 712.8(c)(1)(A) seeks to preserve the option of extended operations at Diablo Canyon, other sections of statute set forth the requirement to "track all costs associated with continued and extended operations and Diablo Canyon"⁷ and to develop processes and methodologies to determine whether the costs incurred were reasonable.⁸ Therefore, in authorizing PG&E to take all actions that would be necessary the Commission is

⁷ Section 712.8(e)

⁸ Pub. Res. Code Section 25548.4(a).

not indicating that the resultant costs are reasonable, which is to be evaluated through a separate review process.

3. Cost Tracking Accounts for Diablo Canyon

The Amended Scoping Memo directed PG&E to file comments addressing: (1) whether one or more new cost tracking accounts are needed, and/or whether modifications are needed to existing cost tracking accounts, to satisfy the requirements set forth in Section 712.8(e); (2) how PG&E plans to track and record the associated costs for operations at Diablo Canyon in a clear and transparent manner that prevents double-counting of costs; and (3) whether a process should be established to address potential refinements or enhancements to the cost tracking accounts.⁹

In comments, PG&E asserts that no new cost tracking accounts, or modifications to existing cost tracking accounts, are needed to track and recover costs to operate Diablo Canyon through the expiration of the existing federal operating licenses. However, PG&E proposes to establish two new cost tracking accounts for tracking and recovering costs associated with the potential operational extension of Diablo Canyon. PG&E's existing and proposed cost tracking accounts, as well as the process for further potential refinements to these accounts, are addressed in greater detail below.

3.1. Existing Cost Tracking Accounts for Diablo Canyon

There are currently three Commission-authorized balancing accounts through which PG&E recovers the costs to operate Diablo Canyon: the Diablo Canyon Retirement Balancing Account (DCRBA), the Energy Resource

⁹ Amended Scoping Memo at 4.

Recovery Account (ERRA), and the Portfolio Allocation Balancing Account (PABA). All three balancing accounts are designed to track and record costs to operate Diablo Canyon through the expiration of the existing federal operating licenses, independent of any relicensing efforts.¹⁰

In comments, PG&E states that SB 846 “does not alter the recovery of costs, including those previously approved by the Commission, to operate [Diablo Canyon] Units 1 and 2 until the current expiration dates.”¹¹ Therefore, PG&E does not believe any changes are needed to the existing, Commission-authorized balancing accounts, which PG&E asserts will continue to be tracked and recovered in the same manner as now.¹² No party took issue with PG&E’s proposal to leave these accounts unaltered.

We find PG&E’s explanation of why changes are not needed to its existing accounts to be reasonable and consistent with the plan language in SB 846, and affirm that this decision does not make any changes to the DCRBA, ERRA, or the PABA.

3.2. DCP Transition and Relicensing Memorandum Account

PG&E proposes to establish the *DCPP Transition and Relicensing Memorandum Account* (DCTRMA) to track and record all costs, expenses, and financial commitments in furtherance of the directive in SB 846 to preserve the option for extended operations at Diablo Canyon, including:

[C]osts for all incremental licensing, permitting, regulatory, legal and litigation, internal and contracted labor, fuel procurement, handling, and management costs, spent

¹⁰ PG&E Comments at 1-2.

¹¹ *Id.* at 2; also, Section 712.8(m).

¹² PG&E Comments at 1-2.

fuel-related costs (*i.e.*, incremental dry cask storage costs), fees, and expenditures in connection with transitioning DCP from existing operations into extended operations (*i.e.*, beyond the current federal license period for Unit 1 and Unit 2), including a monthly performance-based transition fee.¹³

PG&E states that the costs of these transition and relicensing activities will not be recovered from ratepayers.¹⁴ Instead, costs recorded in the DCTRMA are to be funded solely through government funding streams, including the amounts allocated by Assembly Bill (AB) 180¹⁵ and SB 846,¹⁶ as well as any funding made available through DOE's Civil Nuclear Credit program.¹⁷ While PG&E expects most of these costs to be incurred prior to the expiration of the current federal licensing periods, PG&E asserts the costs recorded in the DCTRMA will be defined by the stipulations associated with the relevant loan or funding agreement, and not by the timeframe in which they are incurred.¹⁸

3.3. DCP Extended Operations Balancing Account

PG&E proposes to establish the *DCP Extended Operations Balancing Account* (DCEOBA) to track and recover extended operation costs that are not eligible for cost recovery under the executed loan agreements with the

¹³ *Id.* at 4.

¹⁴ *Id.* at 3.

¹⁵ AB 180 authorizes up to \$75 million to retain future availability of electric generating facilities that are pending retirement. (*See* Stats. 2022, ch. 44, Section 23, Provision 3(e).)

¹⁶ SB 846 makes available up to \$1.4 billion to extend operations of Diablo Canyon, subject to certain conditions being met. (*See* Pub. Res. Code Section 25548.3.)

¹⁷ The Infrastructure Investment and Jobs Act, signed November 15, 2021, appropriates \$6 billion dollars for fiscal years 2022 - 2026 to establish the Civil Nuclear Credit Program for the purpose of preventing closures of nuclear power plants. PG&E submitted its application under the Civil Nuclear Credit program on September 2, 2022. (PG&E Comments at 4.)

¹⁸ *Id.* at 3-5.

Department of Water Resources (DWR) pursuant to SB 846 and AB 180. PG&E's preliminary proposal for the DCEOBA consists of four two-way subaccounts which will separately record the appropriate allocation of costs and the respective customer-billed and market revenues received. To track and record the costs to be borne by customers outside of PG&E's service territory, PG&E indicates the general accounting structure of the DCEOBA may be replicated for each Commission-jurisdictional load serving entity (LSE) or investor-owned utility (IOU) service territory.¹⁹ PG&E's four proposed subaccounts are briefly summarized below.

- Liquidated Damages Subaccount: As described in Sections 712.8(g) and 712.8(i), in the event replacement power costs are incurred during unplanned outage periods, and PG&E is found to have not met the reasonable manager standard, the Commission is directed to authorize payment of the replacement power costs from the Diablo Canyon Extended Operations Liquidated Damages Balancing Account (LDBA). This subaccount would be used to fund the LDBA in the amount of \$12.5 million per unit per year until it has a balance of \$300 million.²⁰
- Performance and Management Subaccount: SB 846 sets up multiple streams of performance and management fees to PG&E in lieu of the traditional rate-base return on capital investments. This subaccount would be used to track and recover the fixed management fee of \$50 million per unit per year, as well as the volumetric performance fees of \$6.50 per megawatt-hour from all Commission-jurisdictional LSEs and an additional \$6.50 per megawatt-hour from customers in PG&E's service territory.²¹

¹⁹ PG&E Comments at 5-6.

²⁰ See Section 712.8(i).

²¹ See Sections 712.8(f)(5) – 712.8(f)(6)(A).

- Extended Operations Period Subaccount: This subaccount would be used to track and recover costs incurred for extended operations that are not otherwise eligible for recovery under AB 180, SB 846, and/or funding through the DOE Civil Nuclear Credit program. At a minimum, PG&E anticipates the costs to include: operations and maintenance costs; plant and equipment improvement and investment costs; future spent fuel storage capacity; fuel purchasing for post-2026 cycles; pension, taxes, benefits and all standard PG&E overheads; costs associated with the employee retention agreement; and regulatory compliance items. This subaccount will also be used to credit any excess market revenues which are in excess of costs back to customers, including for customers of other LSEs.
- Additional Decommissioning Planning Costs Subaccount: This subaccount would be used to cover additional decommissioning planning costs resulting from the license renewal applications or license renewals, and might include costs to suspend, and later re-start, decommissioning planning activities.²²

3.4. Party Comments

Cal Advocates and A4NR assert PG&E's high-level descriptions of the DCTRMA and DCEOBA are vague and ambiguous in ways that contradict SB 846, particularly as they pertain to the potential recovery of costs from utility ratepayers instead of through government funding. To prevent double-counting, shield ratepayers from costs the Legislature intended to cover using non-ratepayer sources of funding, and adhere to the cost-effectiveness review and government funding cost caps contained in SB 846, Cal Advocates and A4NR recommend the following costs be recorded in the DCTRMA, and not the DCEOBA: plant and equipment improvement and investment costs; spent fuel

²² PG&E Comments at 6-9.

storage capacity costs; and any related taxes or other revenue requirements.²³ In addition, A4NR asserts that obtaining sufficient fuel for the entire 5-year extended operations period should fall within the DCTRMA, and that some of the costs PG&E identifies in the Extended Operations Period Subaccount are eligible for recovery under the Civil Nuclear Credit program.²⁴

Cal Advocates also recommends: (1) a fifth DCEOBA subaccount be created to record additional retirement preparation costs stemming from license renewal or the relicensing application, consistent with the different cost recovery treatment specified in SB 846;²⁵ (2) to ensure PG&E removes any overhead rate base items from PG&E's General Rate Case accounts, PG&E should be directed to record Diablo Canyon-related rate base items to the DCTRMA and DCEOBA, and not as "standard overheads"; and (3) any incremental funding for the employee retention program should be submitted through an application and not an advice letter, consistent with the requirement in Section 712.8(f)(2).²⁶

Concerning the length of the extended operations period, A4NR highlights that PG&E's September 28, 2022 presentation to the Diablo Canyon Independent Safety Committee explicitly raised the possibility of a 20-year extended operations period,²⁷ while GPI notes that if PG&E were to finish its suspended NRC license application it would yield a 20-year license extension.²⁸

²³ Cal Advocates Reply Comments at 3-5; A4NR Reply Comments at 1-4.

²⁴ A4NR Reply Comments at 2 and 4-6.

²⁵ See Section 721.1(f)(1).

²⁶ Cal Advocates Reply Comments at 5-7.

²⁷ A4NR Reply Comments at 9-11.

²⁸ GPI Reply Comments at 3.

Lastly, in its supplemental comments, PG&E clarifies, among other things, that Cal Advocates' recommendation for the creation of a fifth DCEOBA subaccount is unnecessary, since the Additional Decommissioning Planning Costs Subaccount as proposed is only for incremental decommissioning planning costs stemming from license renewals or renewal applications. PG&E further explains that the separate cost recovery process for "reasonable costs incurred to prepare for the retirement of Diablo Canyon Units 1 and 2"²⁹ is already taking place in connection with ongoing Nuclear Decommissioning Triennial Cost Proceeding processes. PG&E concedes that SB 846 requires any incremental funding for an employee retention plan to be submitted for Commission review through an application. Lastly, PG&E confirms that it applied for the DOE Civil Nuclear Credit program on September 2, 2022, and that its application remains pending.³⁰

3.5. Discussion

As discussed in Section 4 of this decision, PG&E is directed to file a Tier 3 Advice Letter following this decision to provide a more detailed and complete accounting structure of the associated costs and recovery of the DCTRMA and DCEOBA for Commission approval. In the meantime, PG&E is directed and authorized to immediately begin tracking and recording all costs associated with preserving the option to extend operations at Diablo Canyon, with the understanding that these costs will need to be transferred into the final DCTRMA accounting structure once approved.

²⁹ Section 721.8(f)(1).

³⁰ PG&E Supplemental Comments at 4-7.

Regarding the potential for PG&E's proposed structure to shift costs to utility ratepayers instead of being recovered through government funding, we begin with all relevant sections of statute: first, AB 180 allows DWR to provide up to \$75 million to support generating facilities pending retirement; there is no statutory reference or requirement that the Commission be involved in the disbursement or potential review of these funds.³¹ Concerning the SB 846 loan agreement, Pub. Res. Code Section 25548.4(a) specifies that DWR, "in collaboration with the Public Utilities Commission, shall establish a methodology and process for it to conduct a semiannual true-up review of the borrower's use of loan proceeds." In addition, Pub. Res. Section 25548.3(C)(3) defines covered costs under the SB 846 loan as "those necessary to preserve the option of extending the Diablo Canyon powerplant or to extend the Diablo Canyon powerplant's operation to maintain electrical reliability." Finally, and as noted by parties, Pub. Res. Code Sections 25548.3(a) - 25548.3(b)(1) and 25548.3(c)(5)(B) establish a cap on the SB 846 loan amount, while Pub. Res. Code Section 25233.2(b) requires the California Energy Commission to "reevaluate the cost-effectiveness of prolonging the powerplant's operations" if the "costs of the extension of operations of the Diablo Canyon powerplant exceed limits provided for in the loan agreement at any time."

DWR is tasked with developing the methodology and process for reviewing costs recorded under the AB 180 and SB 846 agreements (with review of SB 846-related funds performed in coordination with the Commission); therefore, the question of whether PG&E's recorded costs will be eligible to be recovered under these agreements is to be overseen and determined through a

³¹ Stats. 2022, ch. 44, Section 23, Provision 3(e).

DWR, and not a Commission, process. Further, any funding amounts provided by the Civil Nuclear Credit program are to be determined by the DOE.

Therefore, it is reasonable for PG&E's Extended Operations Period Subaccount to include costs that are ineligible for government funding, and which may otherwise warrant review and potential recovery from utility ratepayers.

However, based upon the broad statutory definition of eligible costs under the SB 846 loan, the need to accurately account for all costs as they relate to the cost cap and cost-effectiveness evaluation in SB 846, as well as the more foundational requirement in Section 451 that "all charges demanded or received by any public utility...shall be just and reasonable," PG&E should attempt to recover the following extended operations costs using government funding to the greatest extent possible: all costs associated with preserving the option of extended operations at Diablo Canyon (*See* Section 2); all plant and equipment improvement and investment costs; the \$7 per megawatt-hour performance-based disbursement fee; fuel purchases; spent fuel storage capacity costs; and any related taxes or other revenue requirements. In the event that any of these costs are deemed ineligible for government funding, PG&E may transfer the costs to the Extended Operations Period Subaccount of the DCEOBA for Commission review and potential recovery. In the event that PG&E records any of these costs directly to the DCEOBA without seeking government funding, PG&E should be prepared to explain why it did not seek government funding, or was otherwise unable to anticipate the need for the investments and activities at the time government funding was being requested.

We agree with almost all of the other recommendations provided by Cal Advocates. From a transparency standpoint, and to avoid the double-counting of costs, PG&E should record any Diablo Canyon-related rate base

items to the DCTRMA and DCEOBA, and PG&E may not record these costs as “standard PG&E overheads.” Further, and as acknowledged by PG&E in Supplemental Comments, Section 712.8(f)(2) requires any additional funding for the employee retention program (above what was already approved in D.18-11-024) to be submitted for Commission approval through an application. Lastly, concerning the requirement in Section 712.8(f)(1) that different cost recovery take place for the costs to prepare for the retirement of Diablo Canyon, as well as any additional decommissioning planning costs resulting from the license renewal applications or license renewals, we find PG&E’s additional explanation of how these costs will be separately tracked to be consistent with the underlying statutory intent, and therefore do not require PG&E to create a fifth DCEOBA subaccount.

Concerning the length of the extended operations period at Diablo Canyon, SB 846 is clear that any extension of operations will be limited, with Unit 1 operating no later than October 2029, and Unit 2 operating no later than October 2030.³² All costs and benefits recorded in the DCTRMA and DCEOBA must adhere to these timeframes and requirements.

Finally, while the Commission is expected to establish a separate process for PG&E to “recover all reasonable costs and expenses necessary to operate Diablo Canyon Units 1 and 2 beyond the current expiration dates,”³³ for the purposes of tracking costs in the DCEOBA, and to ensure adequate ratepayer protections, PG&E should, at a minimum, be able to explain why the associated activity for each cost was necessary and consistent with statute; whether the costs

³² Pub. Res. Code Section 25548.1(f).

³³ See Section 712.8(h)(1).

incurred are incremental and reasonable; and whether any of the costs might otherwise be eligible to be recovered through government funding and were initially being tracked as part of the DCTRMA.

Since this decision authorizes PG&E to take all actions that would be necessary to preserve the option of extended operations at Diablo Canyon, PG&E is directed and authorized to immediately begin tracking and recording all costs associated with preserving the option to extend operations at Diablo Canyon, with the understanding that these costs will need to be transferred to the final DCTRMA accounting structure following the Advice Letter process described below.

4. Advice Letter Process

As a consequence of the complexity of work and the constrained timeline to file comments, PG&E asserts the proposed structure for the DCTRMA and DCEOBA should be viewed as preliminary. Accordingly, PG&E requests it be authorized to file a Tier 2 Advice Letter within 45 days of the issuance of a final decision to provide a detailed and complete accounting structure of the associated costs and recovery of the proposed DCTRMA and DCEOBA. PG&E also proposes to file Tier 1 (for ministerial changes) and Tier 2 (for non-ministerial changes) Advice Letters, as necessary, and on an ongoing basis, to address further potential refinements or enhancements to the cost tracking accounts. PG&E asserts the significantly longer approval process associated with a Tier 3 Advice Letter, as contemplated in the Amended Scoping Memo, is unsuited to the constrained timelines associated with near-term cost tracking requirements needed to effectively implement AB 180 and SB 846.³⁴

³⁴ PG&E Comments at 9-10.

Cal Advocates recommends PG&E be directed to file a Tier 3 Advice Letter given the level of ambiguity and uncertainty reflected in PG&E's opening comments.³⁵ A4NR also recommends PG&E be directed to file a Tier 3 Advice Letter, but only after PG&E holds a meet and confer with representatives of all LSEs to attempt to develop a consensual proposal for the design and administration of the proposed DCEOBA. A4NR's proposed schedule would require PG&E to: meet and confer with all LSE representatives within 30 days of the final Commission decision; file an update on the status of these efforts within 60 days of the final Commission decision; and file a Tier 3 Advice Letter containing a detailed and complete accounting structure of the DCTRMA and DCEOBA within 90 days of the final Commission decision.³⁶

Given the complexities of managing the potential extension of Diablo Canyon, the Farm Bureau recommends PG&E be required to report costs entered into the proposed DCTRMA and DCEOBA every six months.³⁷

4.1. Discussion

There are three main topics concerning the Advice Letter process as it pertains to the two new cost tracking accounts approved in this decision, which we address in turn below.

First, for the initial Advice Letter in which PG&E will provide a detailed and complete accounting structure of the associated costs and recovery of the DCTRMA and DCEOBA, we find a Tier 3 Advice Letter to be appropriate. We also support A4NR's recommendation to have PG&E meet and confer with representatives of all the LSEs, which will provide the opportunity to work

³⁵ Cal Advocates Reply Comments at 6-7.

³⁶ A4NR Reply Comments at 13-14.

³⁷ Farm Bureau Reply Comments at 2-4.

through any differences before the Advice Letter is filed, but find A4NR's suggested timeframe to be overly extended. Therefore, PG&E is directed to file a Tier 3 Advice Letter within 60 days of the issuance date of this decision to provide a detailed and complete accounting structure of the associated costs and recovery of the DCTRMA and DCEOBA. Prior to filing this Advice Letter, PG&E must hold at least one meet and confer session where all LSEs and parties to this proceeding are invited to participate. Because this decision directs and authorizes PG&E to immediately begin tracking costs associated with preserving the option to extend operations at Diablo Canyon, the longer timeline associated with a Tier 3 Advice Letter process is generally not expected to impact the implementation of AB 180 or SB 846.

Second, for any additional, ongoing refinements or enhancements to the DCTRMA or DCEOBA, we find PG&E's proposed process of filing a Tier 1 Advice Letter for any ministerial changes, and a Tier 2 Advice Letter for any non-ministerial changes, to be reasonable.³⁸ At this stage, the accounting structure for both accounts should be detailed and complete, and allowing PG&E to make further changes through a Tier 1 or Tier 2 Advice Letter will improve the overall efficiency of processing these Advice Letters, consistent with our expectation that most changes will be limited in scope, while still providing the opportunity for any protests to be addressed through a resolution before the Commission if necessary.

Finally, due to the complex nature of the costs being tracked in the DCTRMA and DCEOBA, as well as the need to continually monitor the level of costs incurred, we agree with the Farm Bureau that PG&E should report the costs

³⁸ See Commission General Order 96-B, Energy Industry Rule 5, for information concerning matters appropriate for the different Advice Letter Tiers.

entered into the DCTRMA and DCEOBA every six months. Because this report is intended to be informational only, PG&E is directed to file these cost reports as Tier 1 Advice Letters, with the first report due on January 16, 2023.

5. Closing the Proceeding

Given the expedited timelines associated with the potential extension of Diablo Canyon, PG&E and GPI recommend establishing a second phase of this proceeding to consider additional requirements in SB 846, rather than addressing these issues through a new rulemaking.³⁹ WEM, FOE, and SLOMFP highlight the Commission's statutory obligation to monitor the costs associated with potential extended operations at Diablo Canyon, and to ensure funding streams are halted in the event any conflicts arise with the associated requirements set forth in SB 846.⁴⁰ A4NR and GPI assert the lack of discussion in PG&E's comments concerning how it will address any shortfalls in cumulative awards from the Civil Nuclear Credit program, or any other government funds, prevents proper analysis of whether the DCEOBA provides adequate utility ratepayer protections.⁴¹ Lastly, A4NR and WEM recommend PG&E be directed to share, either through the appropriate protective orders/non-disclosure agreements or as part of the record in this proceeding, the executed AB 180 agreement between PG&E and DWR; any executed DWR loan agreements entered into pursuant to SB 846; PG&E's September 2, 2022 Certification Application to DOE's Civil Nuclear Credit program; and any post-application written responses made by PG&E to DOE requests for additional information.⁴²

³⁹ PG&E Comments at 10-11; GPI Reply Comments at 2-3.

⁴⁰ WEM Reply Comments at 2-4; FOE and SLOMFP Reply Comments (filed jointly) at 2-4.

⁴¹ A4NR Reply Comments at 7-8; GPI Reply Comments at 2.

⁴² A4NR Reply Comments at 13; WEM Reply Comments at 1-2.

5.1. Discussion

While we appreciate and agree that there are several time-sensitive issues in SB 846, we are not convinced the current proceeding is well suited to address these and all of the other SB 846 issues that will need to be considered by the end of 2023, and potentially beyond. The current proceeding was initiated on August 11, 2016, over six years ago. There are now almost 200 people on the service list, a significant number of which no longer have valid email addresses. Further, it is not clear whether all of the parties in this proceeding intend to actively participate in the SB 846-specific issues that are expected to be the focus going forward, or the extent to which the record in this proceeding needs to be updated, given that party testimony was served prior to May 2017 and before the enactment of SB 846. Therefore, this decision closes A.16-08-006. The Commission commits to opening a new rulemaking on an expedited schedule in accordance with the range of time-sensitive SB 846-related issues that will need to be monitored, considered, and addressed. In response to the specific issues raised by PG&E, WEM, FOE, SLOMFP, A4NR, and GPI, this new rulemaking may consider whether additional agreements and mechanisms are needed to ensure costs are recovered; whether additional processes are needed to monitor the costs associated with extended operations; as well as whether additional ratepayer protections are needed in the event there are any shortfalls in government funding.

Lastly, PG&E is directed to share copies of the following documents with any party to this proceeding that has or obtains the appropriate non-disclosure agreement, if such documents are requested and the document(s) exist: the executed AB 180 agreement between PG&E and DWR; any executed agreements pursuant to SB 846; PG&E's September 2, 2022 Certification Application to DOE's

Civil Nuclear Credit program; and any post-application written responses made by PG&E to DOE requests for additional information. This information is expected to assist parties in their review of the final accounting structures for the DCTRMA and DCEOBA, and in preparation for their potential participation in the new SB 846 rulemaking.

6. Conclusion

PG&E is authorized and directed to take all actions that would be necessary to preserve the option of extended operations at Diablo Canyon until the following retirement dates, conditional upon approval by the United States Nuclear Regulatory Commission: (i) for Unit 1, October 31, 2029; (ii) for Unit 2, October 31, 2030. This authorization is grounded in the specific language set forth in Section 712.8(c)(1)(A) and the unique circumstances associated with preserving the option of extended operations at Diablo Canyon, including the statutory requirements that PG&E take “all actions that *would be* necessary,” the expedited timeframe for a final Commission decision in this matter, and the subsequent review processes to evaluate the reasonableness of any costs incurred.

This decision also authorizes and directs PG&E to immediately begin tracking and recording all costs associated with preserving the option to extend operations at Diablo Canyon; directs PG&E to file a Tier 3 Advice Letter following one or more meet and confer session(s) with all LSEs and parties to this proceeding, and within 60 days of the issuance date of this decision, to detail the final accounting structures of the DCTRMA and DCEOBA; and approves a process for PG&E to propose further clarifications or enhancements to the DCTRMA and DCEOBA, and to regularly report the level of costs incurred therein.

Lastly, this decision closes A.16-08-006. The Commission will open a new rulemaking on an expedited schedule in accordance with the range of time-sensitive SB 846-related issues that will need to be monitored, considered, and addressed.

7. Outstanding Procedural Matters

All previous rulings made by the assigned Commissioner and assigned ALJ are affirmed. All motions not previously ruled on are deemed denied.

8. Comments on Proposed Decision

The proposed decision of ALJ Ehren D. Seybert in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on _____, and reply comments were filed on _____ by _____.

9. Assignment of Proceeding

Alice Reynolds is the assigned Commissioner and Ehren D. Seybert is the assigned ALJ in this proceeding.

Findings of Fact

1. Other than Ordering Paragraph (1) of D.18-01-022, there are no other Commission orders that address PG&E's proposed retirement dates for Diablo Canyon in A.16-08-006.

2. At the time of this decision, the federal licenses for Diablo Canyon Unit 1 and Unit 2 are set to expire on November 2, 2024 and August 26, 2025, respectively.

3. This proceeding is not scoped to consider the establishment of new retirement dates for Diablo Canyon Units 1 and 2.

4. The following is a non-exclusive list of activities expected to be necessary to preserve the option of extended operations at Diablo Canyon: (i) activities

associated with obtaining a new operating license from the NRC; (ii) activities associated with obtaining the applicable approvals and operating permits from the state of California; (iii) activities in connection with transitioning Diablo Canyon from existing operations into extended operations (*i.e.*, the period of time beyond the current federal license periods for Unit 1 and Unit 2); and (iv) activities associated with one or more applications under the DOE Civil Nuclear Credit program.

5. There are ongoing federal and state processes associated with the potential extension of operations at Diablo Canyon which could result in the need to approve additional actions past the 120-day period specified in Pub. Util. Code Section 712.8(c)(1)(A).

6. There are three existing Commission-authorized balancing accounts through which PG&E recovers the costs to operate Diablo Canyon, including the DCRBA, ERRA, and PABA.

7. The DCRBA, ERRA, and PABA are designed to track and record costs to operate Diablo Canyon through expiration of the existing federal operating licenses, independent of any relicensing efforts.

8. No party took issue with PG&E's proposal to leave the DCRBA, ERRA, and PABA unaltered.

9. As currently designed, the DCTRMA would be funded entirely through government funding streams, including amounts allocated by AB 180 and SB 846, as well as any funding made available through DOE's Civil Nuclear Credit program.

10. PG&E applied for the DOE Civil Nuclear Credit Program on September 2, 2022, and as of the date of this decision PG&E's application remains pending.

11. The assessment of whether PG&E's recorded costs are eligible to be recovered under the AB 180 and SB 846 agreements is to be determined through a process overseen by DWR.

12. Any funding amounts provided through the Civil Nuclear Credit program are to be determined by the DOE.

13. There is not a definition for, or listing of, "all standard PG&E overheads" in the record of this proceeding.

14. PG&E's Additional Decommissioning Planning Costs Subaccount is intended to recover the incremental decommissioning planning costs stemming from license renewals or renewal applications, while the "reasonable costs incurred to prepare for the retirement of Diablo Canyon Units 1 and 2" are recovered through the ongoing Nuclear Decommissioning Triennial Cost Proceeding processes.

15. Regular reporting of the costs being tracked in the DCTRMA and DCEOBA will improve transparency, and aid the Commission and parties in monitoring the level of costs incurred.

16. The following information is relevant to the establishment of a final cost accounting structure for the DCTRMA and DCEOBA: the executed AB 180 agreement; any executed agreements pursuant to SB 846; PG&E's September 2, 2022, Certification Application to DOE's Civil Nuclear Credit program; and any post-application written responses made by PG&E to DOE requests for additional information.

17. A.16-08-006 was initiated on August 11, 2016, over six years ago.

Conclusions of Law

1. Pub. Util. Code Section 712.8(b)(1), invalidates Ordering Paragraphs 1 and 14 of D.18-01-022, concerning approval of PG&E's initial proposal in

A.16-08-006 to retire Diablo Canyon Unit 1 by 2024 and Unit 2 by 2025, and closing the proceeding, respectively.

2. In view of the legislative invalidation of Ordering Paragraphs 1 and 14 of D.18-01-022, those Ordering Paragraphs have no force or effect, and should be invalidated by this decision to ensure consistency with statute.

3. Pub. Util. Code Section 712.8(c)(1)(A) requires the Commission, within 120 days of the effective date of SB 846, to “direct and authorize the operator of the Diablo Canyon Units 1 and 2 to take all actions that would be necessary to operate the powerplant beyond the current expiration dates, so as to preserve the option of extended operations, until the following retirement dates, conditional upon continued authorization to operate by the United States Nuclear Regulatory Commission: (i) For Unit 1, October 31, 2029. (ii) For Unit 2, October 31, 2030.”

4. Pub. Util. Code Section 712.8(e) requires the Commission to “order the operator to track all costs associated with continued and extended operations of Diablo Canyon Units 1 and 2.”

5. Pub. Res. Code Section 25548.4(a) requires DWR, in coordination with the Commission, to establish a methodology and process to review the use of the DWR loan proceeds pursuant to SB 846.

6. The use of “all actions that would be necessary” in Section 712.8(c)(1)(A) is a conditional future statement, rather than a factual statement, and is subject to further development.

7. PG&E should be directed and authorized to take all actions, both known and unknown at this time, to preserve the option of extended operations at Diablo Canyon.

8. By directing and authorizing PG&E to take all actions that would be necessary to preserve the option of extended operations at Diablo Canyon, the Commission is not indicating that the resultant costs are reasonable.

9. Pub. Util. Code Section 712.8(m) states that SB 846 does not alter the costs, including those previously approved by the Commission, to operate Diablo Canyon Units 1 and 2 until the current expiration dates.

10. No changes should be made to the DCRBA, ERRA, or PABA.

11. AB 180 allows DWR to provide up to \$75 million to support generating facilities pending retirement.

12. Pub. Res. Code Section 25548.4(a) specifies that DWR, “in collaboration with the Public Utilities Commission, shall establish a methodology and process for it to conduct a semiannual true-up review of the borrower’s use of loan proceeds.”

13. Pub. Res. Section 25548.3(c)(3) defines covered costs under the SB 846 loan as “those necessary to preserve the option of extending the Diablo Canyon powerplant or to extend the Diablo Canyon powerplant’s operation to maintain electrical reliability.”

14. Pub. Res. Code Sections 25548.3(a) - 25548.3(b)(1) and 25548.3(c)(5)(B) establish a cap on the SB 846 loan amount, while Pub. Res. Code Section 25233.2(b) requires the California Energy Commission to “reevaluate the cost-effectiveness of prolonging the powerplant’s operations” if the “costs of the extension of operations of the Diablo Canyon powerplant exceed limits provided for in the loan agreement at any time.”

15. It is reasonable for PG&E’s Extended Operations Period Subaccount to include costs that are ineligible for government funding, and which may otherwise warrant review and potential recovery from utility ratepayers.

16. Pub. Util. Code Section 451 requires that all charges demanded or received by any public utility shall be just and reasonable.

17. PG&E should attempt to recover the following extended operations costs using government funding to the greatest extent possible: all costs associated with preserving the option of extended operations at Diablo Canyon; all plant and equipment improvement and investment costs; the \$7 per megawatt-hour performance-based disbursement fee; fuel purchases; spent fuel storage capacity costs; and any related taxes or other revenue requirements.

18. Recording any Diablo Canyon-related rate base items to the DCTRMA and DCEOBA, as compared to “standard overheads,” would increase the overall transparency of the specific costs being incurred.

19. PG&E should record any Diablo Canyon-related rate base items to the DCTRMA and DCEOBA, and should not record these costs as “standard overheads.”

20. SB 846 limits any extension of operations at Diablo Canyon to October 2029 (Unit 1) and October 2030 (Unit 2).

21. All costs and benefits recorded in the DCTRMA and DCEOBA must adhere to the timeframes and requirements set forth in SB 846.

22. PG&E should be directed and authorized to immediately begin tracking and recording all costs associated with preserving the option to extend operations at Diablo Canyon.

23. PG&E should be directed to file a Tier 3 Advice Letter within 60 days after the issuance date of this decision to provide a detailed and complete accounting structure of the associated costs and recovery of the DCTRMA and DCEOBA.

24. Prior to filing the Tier 3 Advice Letter, PG&E should hold at least one meet and confer session where all LSEs and parties to A.16-08-006 are invited to participate.

25. PG&E should be authorized to file a Tier 1 or Tier 2 Advice Letter for any additional, ongoing refinements or enhancements to the DCTRMA or DCEOBA.

26. Regular reporting of the costs being tracked in the DCTRMA and DCEOBA will improve transparency, and aid the Commission and parties in monitoring the level of costs incurred.

27. PG&E should be directed to report the costs entered into the DCTRMA and DCEOBA on January 16, 2023, and every six months thereafter, until such time that the DCTRMA and/or DCEOBA are no longer being used.

28. PG&E should be directed to share copies of the following documents with any party in this proceeding that has or obtains the appropriate non-disclosure agreement, if such documents are requested and the documents exist: the executed AB 180 agreement between PG&E and DWR; any executed agreements pursuant to SB 846; PG&E's September 2, 2022 Certification Application to DOE's Civil Nuclear Credit program; and any post-application written responses made by PG&E to DOE requests for additional information.

29. Any outstanding motions filed in this proceeding as of the issuance date of this decision, and that have not been addressed in this decision, are deemed denied.

30. A.16-08-006 should be closed.

O R D E R

IT IS ORDERED that:

1. Ordering Paragraphs 1 and 14 of Commission Decision 18-01-022 are null and void.

2. Pacific Gas and Electric Company is authorized and directed to take all of the actions identified in this decision, and any other actions that would be necessary, to operate Diablo Canyon power plant Units 1 and 2 beyond the current federal license expiration dates, so as to preserve the option of extended operations until the following retirement dates, conditional upon continued authorization to operate by the United States Nuclear Regulatory Commission: (i) for Unit 1, October 31, 2029; (ii) for Unit 2, October 31, 2030.

3. Pacific Gas and Electric Company is authorized and directed to immediately begin tracking and recording all costs associated with preserving the option of extended operations at Diablo Canyon.

4. Within 60 days of the issuance date of this decision, Pacific Gas and Electric Company (PG&E) shall file a Tier 3 Advice Letter to provide a detailed and complete accounting structure of the associated costs and recovery of the Diablo Canyon Power Plant Transition and Relicensing Memorandum Account and the Diablo Canyon Power Plant Extended Operations Balancing Account. Prior to this filing, PG&E must hold at least one meet and confer session where all load serving entities subject to the California Public Utilities Commission's jurisdiction, and parties to Application 16-08-006, are invited to participate.

5. By January 16, 2023, and every six months thereafter, Pacific Gas and Electric Company shall file a Tier 1 Advice Letter containing a report of the costs entered into the Diablo Canyon Power Plant Transition and Relicensing Memorandum Account (DCTRMA), until such time that the DCTRMA is terminated by Commissioner order.

6. By January 16, 2023, and every six months thereafter, Pacific Gas and Electric Company shall file a Tier 1 Advice Letter containing a report of the costs entered into the Diablo Canyon Power Plant Extended Operations Balancing

Account (DCEOBA), until such time that the DCEOBA is terminated by Commission order.

7. Pacific Gas and Electric Company (PG&E) is directed to share copies of the following documents with any party to this proceeding that has or obtains the appropriate non-disclosure agreement, if such documents are requested by the party and the document(s) exist: the executed Assembly Bill 180 agreement between PG&E and the Department of Water Resources; any executed agreements signed by PG&E pursuant to Senate Bill 846; PG&E's September 2, 2022 Certification Application to the United States Department of Energy's (DOE) Civil Nuclear Credit program; and any post-application written responses made by PG&E to DOE requests for additional information.

8. Application 16-08-006 is closed.

This order is effective today.

Dated _____, at San Francisco, California